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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON**  
8 **AT SEATTLE**

9 TANER TARHAN,

10 Petitioner,

Case No. C11-1185-RSM-JPD

11 v.

12 DEPARTMENT OF HOMELAND  
13 SECURITY, *et al.*,

REPORT AND  
RECOMMENDATION

Respondents.

14 **I. INTRODUCTION AND SUMMARY CONCLUSION**

15 Petitioner is a citizen of Turkey who is being detained by the United States Immigration  
16 and Customs Enforcement (“ICE”) pursuant to an administratively final order of removal. (Dkt.  
17 No. 1 at 2.) On July 15, 2011, petitioner, proceeding through counsel, filed the instant Petition  
18 for Writ of Habeas Corpus and Complaint for Injunctive Relief from Immigration Detention,  
19 pursuant to 28 U.S.C. § 2241, along with an Emergency Request for Stay of Removal. (Dkt. No.  
20 1.) Petitioner asserts that he has filed a motion to reopen his removal proceedings with the Board  
21 of Immigration Appeals (“BIA”) which remains pending. *Id.* at 3. Petitioner avers that he “has  
22 sought a stay of removal and relief from detention from ICE and from the Board of Immigration  
23 Appeals (“BIA”)” but “ICE has not responded, forcing [petitioner] to ask for protection from this  
24

1 Court.” *Id.* at 5. As relief, he requests that this Court “[s]tay his removal until his immigration  
2 appeal is fully heard,” and “Order Petitioner’s continued release from detention, and continued  
3 supervised release under bond.” *Id.* at 12.

4 For the reasons set forth below, the Court recommends that this matter be dismissed for  
5 lack of jurisdiction.

## 6 II. DISCUSSION

7 The REAL ID Act of 2005 amended the judicial review provisions of the Immigration  
8 and Nationality Act to explicitly provide that judicial review of all deportation, exclusion, or  
9 removal orders lies exclusively in the appropriate court of appeals, and that the district courts  
10 no longer have jurisdiction to review such orders. INA § 242(a)(5), 8 U.S.C. § 1252(a)(5).  
11 This statutory provision provides, in part, that the exclusive means of asserting a challenge to a  
12 final order of removal and matters dependent thereon, is to file a Petition for Review with the  
13 appropriate court of appeals. *See id.*; *see also Iasu v. Smith*, 511 F.3d 881, 888 (9th Cir.  
14 2007)(“After the REAL ID Act . . . the district court plainly lacked habeas jurisdiction”); *see*  
15 *also* 8 U.S.C. § 1252(g)(“Except as provided in this section and notwithstanding any other  
16 provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of  
17 any alien arising from the decision or action by the Attorney General to commence  
18 proceedings, adjudicate cases, or execute removal orders against any alien under this  
19 chapter.”). Pursuant to the REAL ID Act, constitutional claims or questions of law, that were  
20 historically reviewed under habeas corpus, now require review in the circuit courts of appeal.  
21 *See* 8 U.S.C. § 1252(a)(2)(d); *Fernandez-Ruiz v. Gonzales*, 410 F.3d 585, 587 (9th Cir. 2005),  
22 *adopted by* 466 F.3d 1121, 1124 (9th Cir. 2006)(en banc).

1 INA § 242(b)(9) further provides that “[j]udicial review of all questions of law and fact,  
2 including interpretation and application of constitutional and statutory provisions, arising from  
3 any action taken or proceeding brought to remove an alien from the United States under this  
4 subchapter shall be available only in judicial review of a final order under this section.” 8  
5 U.S.C. § 1252(b)(9). The Court finds that it lacks jurisdiction over petitioner’s request under  
6 the REAL ID Act because the request to halt the execution of the final orders of removal  
7 “arise[s] from” an “action” or a “proceeding” brought in connection with petitioners’ removal,  
8 or from “the decision or action [to] execute removal orders against” them. INA §§ 242(b)(9),  
9 242(g), 8 U.S.C. §§ 1252(b)(9), 1252(g).

10 “A request to stay an order of removal based on a pending collateral claim does not  
11 escape the jurisdiction stripping provisions of the REAL ID Act.” *Mancho v. Chertoff*, 480 F.  
12 Supp. 2d 160, 162 (D.D.C. 2007)(citing *Formusoh v. Gonzales*, No. 3-07-CV-0128-K, 2007  
13 WL 465305 (N.D. Tex. Feb. 12, 2007)(dismissing for lack of subject matter jurisdiction habeas  
14 petition of petitioner seeking stay of removal pending resolution of an I-130 petition and an I-  
15 485 adjustment of status petition); *Tale v. United States Dep’t of Homeland Sec.*, 2006 U.S.  
16 Dist. LEXIS 47577, at \*1 (S.D. Tex. July 13, 2006)(finding lack of jurisdiction to grant  
17 petitioner preliminary and permanent injunctions barring his deportation prior to the resolution  
18 of his claims pending before an immigration judge). Absent statutory or legal authority that  
19 creates an exception to the REAL ID Act, this Court lacks subject matter jurisdiction over  
20 petitioner’s request for stay of removal during the pendency of his motion to reopen before the  
21 BIA. Under these circumstances, the BIA and the Ninth Circuit are the proper forums for such  
22 claims and, thus for any injunctive relief associated with such claims. *See* 8 C.F.R. §§ 241.6,  
23 1003.6(b); *Nken v. Holder*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

1 III. CONCLUSION

2 For the foregoing reasons, the Court recommends that this matter be dismissed with  
3 prejudice. A proposed order accompanies this Report and Recommendation.

4 DATED this 15th day of July, 2011.

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7 JAMES P. DONOHUE  
8 United States Magistrate Judge  
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